



Indiana Brownfields Bulletin

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In this issue:

[Tips for gold-star projects](#)

[Institutional Controls: ensuring environmental-ly sound redevelopment](#)

- * [Use of ERCs](#)
- * [Land Use Restrictions](#)
- * [ERC Registry](#)
- * [ERC: Change of Ownership](#)
- * [ERC Modification/Termination](#)
- * [Contacts](#)

[Set your sights on sites](#)

[Opportunity Zones create more opportunities for partnerships](#)

[Site highlights: a host of ribbon cuttings](#)

[10-Year review: current Program state and federal financial incentives](#)

[Upcoming Brownfields Technical Training for Local Governments](#)

[Welcome to a familiar face](#)

[CALENDAR OF EVENTS](#)

[Program Staff Directory](#)



Tips for gold-star projects

For seasoned Indiana Brownfields Program (Program) participants and those of you who are new to the brownfields arena, especially newly-elected officials, we offer some tips to help ensure your project goals are achieved. Since our Program's mission is to encourage and facilitate investment in the redevelopment of brownfield properties by helping communities through educational, financial, technical and legal assistance to identify and mitigate environmental barriers that impede local economic growth, we want to ensure our stakeholders are aware of some common sticking points in working with the Program, particularly when requesting a Comfort Letter. It is worth taking note of the following "tips" from the Program:

- ❖ To qualify as a Bona Fide Prospective Purchaser (BFPP), the prospective purchaser (or owner) must have a **viable Phase I Environmental Site Assessment (ESA) report** at the time of property acquisition.

Continued on Page 2

- ❖ As a part of the Phase I ESA report, the Program would like a clear statement or conclusion as to whether there are potential **vapor encroachment conditions** and/or existing contaminant **vapor migration pathways** at the site.
- ❖ The Program prefers a signed and dated **User Questionnaire** (completed by an authorized representative of the entity in which name the property will be titled) with the User's printed name and affiliation of the individual that completed the questionnaire to that entity noted as well.
- ❖ The name of the entity (**the "User"**) for which the **Phase I ESA report** (and **User Questionnaire**) was completed needs to match the name of the entity that will be listed on the property deed (unless the party seeking protection is a prospective tenant, in which case it must match the entity identified in the lease agreement). If the Phase I ESA and User Questionnaire have already been completed for a different-named entity that will not be on the deed (or on a lease), then the party seeking liability protection should obtain a **reliance letter** permitting use of the Phase I ESA report **prior** to acquisition/leasing and complete a User Questionnaire on behalf of the correct entity.
- ❖ A **transmittal letter** noting acquisition details, describing redevelopment plans, and outlining project timeframes and stakeholders, should accompany the completed Comfort Letter/Site Status Letter request form and supporting documentation (maps, deeds, etc.) to ensure your request is complete; an incomplete submittal will delay staff review of your request. Please submit **a paper copy and CD with each form/document/report saved as a separate pdf** as part of your request.
- ❖ The **BFPP liability defense** is **self-implementing**; a stakeholder need not have a Comfort Letter in hand at the time of site transfer/closing to be eligible for the liability defense.

Institutional Controls: ensuring environmentally sound redevelopment



Part of the Indiana Brownfields Program (Program)'s mission is to help identify and mitigate environmental barriers that impede local economic growth. The Indiana Department of Environmental Management (IDEM)'s mission is to implement federal and state regulations to protect human health and the environment while allowing the environmentally sound operations of industrial, agricultural, commercial, and government activities vital to a prosperous economy. One way that the Program and IDEM accomplish their respective missions is through the use of Institutional Controls (ICs), which are defined as non-engineered, administratively and legally enforceable measures that limit human exposure to environmental chemicals of concern at properties. ICs are often used as part of a site's risk-based closure and to facilitate redevelopment by ensuring "due care" is taken on the site to mitigate any potential exposures to known contamination. One of the most common ICs is an **Environmentally Restrictive Covenant (ERC)**. An ERC is a legally binding and IDEM-enforceable document that requires land use restrictions on a property to ensure that exposure pathways to environmental contamination are eliminated.

Use of ERCs

Often times, a Brownfields Site Status Letter or a Comfort Letter is accompanied by an ERC as a condition of the letter's effectiveness. Recordation of the ERC on a property's deed is essential to ensuring environmentally sound redevelopment. Not only do brownfield sites benefit from the use of ERCs, but other remediation programs within IDEM's Office of Land Quality (OLQ), such as the Voluntary Remediation Program (VRP) or State Cleanup, also issue ERCs to allow for risk-based closure of sites. According to

IDEM records, as of January 2019, just over 2,500 properties in Indiana have recorded ERCs. Figure 1 below shows the breakdown of ERC-restricted properties across IDEM’s OLQ Programs. For the Indiana Brownfields Program and all IDEM programs, the purpose and intent of the ERC is the same: to notify future property owners that environmental contamination exists on the property and list the land use restrictions that must be followed to ensure that pathways of exposure to environmental contamination are eliminated.

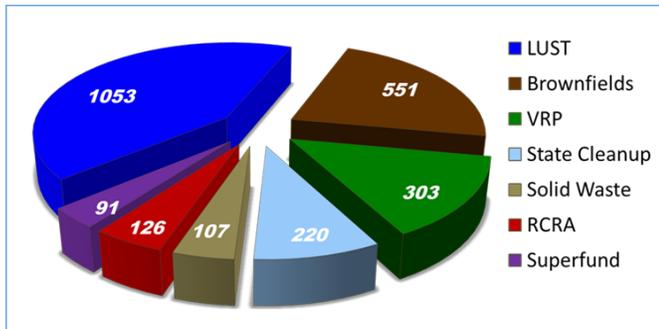


Figure 1: Number of ERCs across IDEM OLQ Programs

Land Use Restrictions

There are numerous land use restrictions (LURs) that can be included in an ERC to ensure safe property redevelopment. LURs can range from excavation restrictions, operation and maintenance plans, to other, more tailored controls. LURs are determined based on site-specific conditions that include consideration for current and future site use (if known), contamination

LURs, located under the “RESTRICTION” section of the ERC, should be carefully considered during the redevelopment phase of a project to ensure exposure pathways are eliminated.

ERC Registry

To serve as an effective institutional control, an ERC must be recorded by the property owner on the deed at the County Recorder’s Office in which the property is located. The Indiana Brownfields Program currently requires parties receiving Comfort, Site Status or No Further Action Letters including an ERC to return a certified copy of the recorded ERC to the Program to demonstrate that it was, in fact, recorded. Once the ERC is recorded, a copy of the stamped ERC is sent to IDEM’s Institutional Controls Group (ICG) for record keeping. The recorded ERC is logged into an IDEM database and a list (registry) of restricted properties is generated in order for IDEM to make IC information available to the public. This list, called the *Institutional Controls Registry Remediation Sites* (IC Registry) is posted on IDEM’s Institutional Controls webpage (<https://www.in.gov/idem/cleanups/2358.htm>). The IC Registry is a PDF document updated the first Monday of the month which lists all properties in Indiana with ICs, including recorded ERCs. The document is sorted alphabetically by county, then alphabetically by city. The *Institutional Controls Registry Remediation Sites* can be searched using the “CTRL + F” function and is depicted in Figure 2 below.

Decatur Casting Incorporated		Agency Interest ID: 8590	822 Dayton St, Decatur 46733	
		Program ID: (4070501)		
Open IndianaMap	IC Type	Date IC Recorded	Description	
VFC Documents	Environmental Restrictive Covenant	1/4/2012		
Program Area	Affected Media			
Brownfields:	Ground Water Subsurface Soil Surface Soil			
Control Method	Coverage	Chemicals of Concern		Comments
Agricultural or Food Crop	Entire Property	SVOCs - Semi Volatile Organic Compounds Metals		Do not use the Real Estate for agricultural purposes unless agricultural plantings are placed in raised beds filled with a minimum depth of at least 18 inches of clean soil.
Ground Water Use Restriction	Entire Property	SVOCs - Semi Volatile Organic Compounds		
Residential Use Restriction	Entire Property	SVOCs - Semi Volatile Organic Compounds Metals		

Figure 2: Screenshot of the *Institutional Controls Registry Remediation Sites*

type, residual contamination levels, extent of contamination, among other factors. The majority of ERCs, almost 70%, have a ground water use restriction, and close to 60% have a residential use restriction. The

Figure 2 above shows an example of an ERC-restricted property on the IC Registry. Beginning at the top of the entry, the site name and address, as well as the IDEM identification numbers, are found in the

green bar. Just below the green bar, additional site/property information is found to include the “IC Type” (which for this property is an Environmental Restrictive Covenant), the “Date IC Recorded” (which was January 4, 2012), and a “Description” column (which has no information, but allows for additional information as necessary). Next, in this case, the “Program Area” is Brownfields and the “Affected Media” is Ground Water, Subsurface Soil and Surface Soil. And the next two columns at the bottom of this Registry are the “Control Method” (or the land use restrictions) and the “Coverage” (for the entire property or a portion of the property). Note that for this particular example, the entire property has the following restrictions: no Agricultural or Food Crop use, no Ground Water use, and no Residential use. The next two columns show the “Chemicals of Concern” (a broad category of chemical constituents detected on the property), and finally “Comments” (which provides additional clarification of a land use restriction, if necessary). In addition, located in the upper left corner, the IC Registry provides a hot link to *IndianaMap*, where the property can be viewed on GIS maps. Also located there is a hot link to IDEM’s Virtual File Cabinet (VFC), where the ERC can be viewed in its entirety.

ERC: Change of Ownership

In accordance with Indiana Code 13-11-1-193.5(F)(ii), when a restricted property changes hands, the current property Owner is required to provide notice to the buyer (new Owner) about the existence of the ERC. In addition, Section II, Paragraph 6 of the ERC, requires that the Owner also provide notice to IDEM if the property is conveyed. The Owner must provide a certified copy of the instrument conveying any interest in any portion of the Real Estate/property, if it has been recorded, its recording reference (instrument number), and the name and business address of the transferee. The easiest way to satisfy this requirement is to provide the Indiana Brownfields Program and/or IDEM with a copy of the new deed documenting the change of ownership.

Set your sights on sites

The Indiana Brownfields Program (Program) wants to know your local universe of brownfield sites in order to be able to offer its assistance. The Program also wants to be kept apprised of project progress and redevelopment success subsequent to its initial involvement with the redevelopment of a site. To date, as part of the Program’s Brownfields Inventory efforts, 7,412 brownfield sites have been identified through a variety of resources, including communities willing to share their local inventories. For more information about the best way to share your local brownfield inventory information with the Program, please contact Nancy Dollar or Michele Oertel of the Indiana Brownfields Program.

In order to keep track of brownfield redevelopment successes and identify the need for further Program assistance, the Program reiterates the benefits of completing a Return on Investment (ROI) project survey form at any time, at your convenience. Through the cooperation of Program participants, we are able to calculate the Program’s ROI, illustrating the benefits of Program assistance and allowing us to highlight local redevelopment success stories. For 2018, the Program derived an ROI calculation of \$10:\$1 for sites on which Program funding has been spent and \$50:\$1 for all Program sites (i.e., project could have received assistance other than financial assistance, such as liability clarification).

The ROI project survey form can be conveniently accessed as an online survey or downloadable spreadsheet form on our Program Web site at <http://www.in.gov/ifa/brownfields/2354.htm> or at <https://www.in.gov/ifa/brownfields/2361.htm>. For assistance, please feel free to reach out to Nancy Dollar.

ERC Modification/Termination

As site conditions and land uses change, as environmental guidance becomes more refined, and as properties change hands, it may be necessary to evaluate recorded ERCs to ensure that the land use restrictions in place remain appropriate. An ERC is attached to a property deed until and unless IDEM determines that the restrictions are no longer necessary. The modification or termination of an ERC begins by filling out State Form #56082 located on the IDEM FORMS webpage under Environmental Restrictive Covenant/Deed Notice Modification or Termination Request - 56082 (https://www.in.gov/idem/5157.htm#olq_ic).

Contacts

If you have questions about an environmentally restricted property, or your organization would be interested in having an IDEM Institutional Control Group staff member present information at your next professional gathering, then please contact IDEM's Institutional Control Group at institutionalcon-trols@idem.in.gov or by calling 317-234-8622.

Should you have a question about a brownfield site with an ERC, the Indiana Brownfields Program may be contacted directly and will coordinate with IDEM as necessary.

Opportunity Zones create more opportunities for partnerships



Since the Tax Cuts and Jobs Act of 2017, which created Opportunity Zones (OZ)s and Opportunity Funds (equity investment tool), Indiana's Governor and other public and private stakeholders have been working toward identifying and coordinating resources that can help the nominated low-income areas (156 census tracts in Indiana) benefit from OZ tax incentives (e.g., long-term federal tax deferral on capital gains

achieved from OZ investments) and realize sustainable redevelopment projects. Business expansions and development projects in these low-income areas are not easily packaged or readily available for an equity infusion, and such deals often need assistance overcoming hurdles, including environmental contamination, to be successful. Collaboration is key, and a new partner that may benefit brownfield redevelopment projects is the *Opportunity Investment Consortium of Indiana*, which is comprised of a collection of public and private investors and statewide partners that coalesced as a rapid deal advancement and resource connectivity hub for Opportunity Zones statewide.

In support of the OZ initiative to catalyze long-term private capital investment in low-income urban and rural communities, the *Opportunity Investment Consortium of Indiana* has a strategy to match challenging projects to potential investors. To this end, a statewide online portal has been launched to serve as an information clearinghouse and a place for communities to connect with potential investors. The Indianapolis office of the Local Initiatives Support Corporation (LISC) is hosting the deal portal which is accessible through the *Opportunity Investment Consortium of Indiana's* website at <https://www.opportunityinvestmentconsortium.com/>.

As part of an initial, two-year pilot for this new federal incentive, an Implementation Team will provide coordinated assistance for deals as they meet milestones toward OZ investment infusions. Commitments to help staff the pilot, sharing resources and best practices, include: State of Indiana, LISC, Cinnaire, Indy Chamber, Indiana Bond Bank, Indiana Economic Development Corporation (IEDC), Indiana Office of Community and Rural Affairs (IOCRA), and Indiana Housing & Community Development Authority (IHCDA), whose roles will vary by serving in a variety of capacities such as leadership, liaison, gatekeeper, tracking, coordination, convener, marketing, education, training, gap financing, navigation, advocate, etc.



The Indiana Finance Authority (IFA), along with other potential public and private partners, participated in a state agency meeting convened by the Governor's Office prior to the *Opportunity Investment Consortium of Indiana* kick-off meeting in Indianapolis on November 16, 2018. One outcome of that meeting is that the IFA will continue to serve as a "Training and Resource Partner" for the OZ initiative and that the Indiana Brownfields Program (Program) would continue to serve as a resource to help manage environmental risk when a brownfield project enters the Program. The IFA will stay at the forefront of the OZ initiative with its mission to oversee State-related debt issuance and provide efficient and effective financing solutions to facilitate state, local government and business investment in Indiana.

Ultimately, Indiana partners want to support difficult projects through the various development stages and help propel deals to actualization more effectively through capacity building, technical assistance, information connectivity and investment matching in order to see the transformation of Opportunity Zone neighborhoods into vibrant places for residents and businesses. For inquiries about different member partnership opportunities (e.g., advisor, investor, professional services, training, etc.) with the *Opportunity Investment Consortium of Indiana*, please begin by contacting one of the following:

Tedd Grain, Indianapolis LISC
tgrain@lisc.org

Keith Broadnax, Cinnare
kbroadnax@cinnare.com

Mark Wuellner, Indiana Bond Bank
mwuellner@inbondbank.com

Jacob Sipe, IHCDA
jsipe@ihcda.gov

Mark Wasky, IEDC
mwasky@iedc.in.gov



Site highlights: a host of ribbon cuttings

Kudos goes to the following communities with recent grand opening events. The Indiana Brownfields Program is pleased to be a partner in these successful brownfield redevelopment projects:

- ❖ **Jasper** - Jasper Wood Products/*Vine St. Lofts* (Site#4120908), Grand Opening 11/15/2018
- ❖ **Richmond** - YMCA Building/*Music City Place apartments* (Site#4140907), Open House 10/24/2018
- ❖ **Plainfield** - Shouse Landfill/*Talon Stream Park* (Site#4080408), Ribbon Cutting October 12, 2018
- ❖ **Ligonier** - Wirk Garment Building/*Riverside Villa Apartments* (Site#4071104), Grand Opening October 2018
- ❖ **South Bend** - Gates Chevrolet Corp/*Ivy at Berlin Place apartments overlooking Four Winds Field Baseball Park* (Site#4161204), opened fall 2018
- ❖ **Terre Haute** - ICON Transport/*American Can/Riverfront Lofts* (Site#4100103), Ribbon Cutting 8/30/2018
- ❖ **Kokomo** - Southside Lumber/*Silver Birch of Kokomo* (Site#4161219), Grand Opening 6/28/2018
- ❖ **Daleville, Delaware Co.** - *Salem Place Apartments* (Site#4160913), Grand Opening 6/8/2018
- ❖ **Warsaw** - *Little Crow Foods/Little Crow Lofts* (Site#4151009), Grand Opening 6/6/2018
- ❖ **Indianapolis** - Perfection Paint/*The Vue* (Site#4140903), Grand Opening 6/5/2018
- ❖ **Evansville** - *Garfield Common Apartments* (Site#4140901), Ground Breaking 4/19/2017, open ~June 2018
- ❖ **Elkhart** - Selmer Company Inc./*Gardenview Sr. Apartments* (Site#4150905), Grand Opening late May 2018

- ❖ **Franklin** - Franklin Building/*Garment Factory event center* (Site#4160607), Open House 4/29/2018
- ❖ **Elkhart** - Bayer Corp. AOC 7/*ETHOS Innovation Center* (Site#41702008), Grand Opening 4/21/2018
- ❖ **Indianapolis** - Finishmaster Inc./*Congress Apartments/part of Congress at Library Square* (Site#4080104), opened spring 2018
- ❖ **Indianapolis** - Woodruff Place Service Center/*Beholder Restaurant* (Site#4160602), opened spring 2018
- ❖ **Martinsville** - Reuse of 3 historic buildings/*Retreat at Mineral Springs* (Site#s4141001, 4160806, 4160817), opened spring 2018
- ❖ **Muncie** - West Kilgore RCF/*Silver Birch senior retirement facility* (Site#4160705), Ribbon Cutting 2/27/2018
- ❖ **Indianapolis** - Market Square Development Project/*Market 360 and Whole Foods* (Site#4140704), opened early 2018
- ❖ **Jeffersonville** - Industrial Haunted House/*M. Fine on Spring apartments* (Site#4141012), Grand Opening 12/29/2017
- ❖ **Indianapolis** - Florence Fay School/*Florence Fay Sr. Apartments* (Site#4150906), Grand Opening 12/14/2017
- ❖ **Woodburn** - Woodburn Elementary School/*Phoenix Manor Sr. Apartments* (Site#4151001), Grand Opening 12/1/2017

10-year review: current Program state and federal financial incentives

- **Supplemental Environmental Projects:** 50 awards (\$1,177,084 drawn)
- **Phase I Initiative:** 26 awards (\$29,625)
- **Petroleum Orphan Sites Initiative:** 61 awards (\$13,526,787)
- **Brownfields Revolving Loan Fund (RLF) Incentive:** 8 loans (\$6,416,465) and 10 Sub-grants pending
- **Section 128(a) site-specific U.S. EPA funding:** 39 awards (\$1,755,129)

Upcoming Brownfields Technical Training for Local Governments



By request of the Michiana Area Council of Governments (MACOG) and through funding provided by U.S. EPA, the Technical Assistance to Brownfields (TAB) and Indiana Brownfields Program will co-host a free, half-day training specifically designed for local governments to understand technical components of the brownfield redevelopment process. The targeted audience is regional planning organizations and municipalities in northern Indiana. Registration is required for this training that will be held in South Bend on March 14, 2019.

For online registration and training materials, check out www.ksutab.org/education/workshops. You may also contact Leah Thill of MACOG at 574-287-1829 ext. 801 or at lthill@macog.com, as well as Maggie Egberts of Kansas State University (KSU) TAB at 785-532-0782 or at maggiejes-sie@ksu.edu.



Welcome to a familiar face...!

With the recent retirement of our long-time Administrative Assistant, Sue Overstreet, came the arrival of long-time Indiana Department of Environmental Management (IDEM) Office of Land Quality Remediation Services Branch Assistant, Tonya Keller. In her former role, Tonya supported the IDEM's Voluntary Remediation Program, State Cleanup Program, Federal Programs, and Institutional Control Group. She also coordinated IDEM review of Brownfields Program correspondence, making her familiar with Program staff and many Program procedures, and an ideal candidate to be the Program's new Program Assistant. Welcome, Tonya!



CALENDAR OF EVENTS



For up-to-date information about events relevant to brownfield redevelopment, please visit the Indiana Brownfields Program Web site: www.brownfields.IN.gov.

Rolling Mid-Month Dates 2019

DEADLINE(S): Indiana Office of Community and Rural Affairs (OCRA) Blight Clearance Program (BCP) Proposal and Application

This funding (up to \$500,000 over a period of time) helps communities with blighted properties to focus on long-term community development and revitalization through improving quality of place, generating

jobs, and spurring economic revitalization. Eligible projects include the removal of deteriorated or abandoned downtown buildings or vacant/unusable industrial sites. The proposal is a draft of the application that allows OCRA to review the basic information of the project and determine if it is likely to meet a national objective and is an eligible activity before approving the submission of a full application. Instructions and proposal/application materials are available at <https://www.in.gov/ocra/2718.htm>.

Rolling Dates 2019

DEADLINE(S): Indiana Economic Development Corporation (IEDC) Industrial Recovery Tax Credit Application

The Industrial Recovery Tax Credit, also known as DINO for the older, "dinosaur" buildings it benefits, provides an incentive for companies to invest in former industrial facilities requiring significant rehabilitation or remodeling expenses. The credit is established by Ind. Code 6-3.1-11.

To apply for the DINO tax credit, please use the Application linked on the Web site which must be submitted before an investment is made:

<https://www.iedc.in.gov/incentives/industrial-recovery-tax-credit>

February – June, 2019

**Interstate Technology Regulatory Council (ITRC) Online Training Events
All Eastern Time**

Registration: <http://www.clu-in.org/live/>

Cost: Sponsored by ITRC and U.S. EPA at no cost for the participant.

Associated Guidance: <http://www.itrcweb.org/Guidance>.

More Information: <http://www.itrcweb.org/training>

If you have questions after completing the online registration, call at 402-201-2419 or send an e-mail to training@itrcweb.org.

NOTE: Course dates and times are subject to change.

February 7, 2019

Issues and Options in Human Health Risk Assessment – A Resource When Alternatives to Default Parameters and Scenarios are Proposed

1pm - 3:15pm

February 19, 2019

Remediation Management of Complex Sites

1pm - 3:15pm

March 21, 2019

Long-term Contaminant Management Using Institutional Controls

1pm - 3:15pm

May 14, 2019

Bioavailability of Contaminants in Soil: Considerations for Human Health Risk Assessment

1pm - 3:15pm

June 4, 2019

TPH Risk Evaluation at Petroleum-Contaminated Sites

1pm - 3:15pm

February 19, 2019

Council of Development Finance Agencies (CDFA) EDA Revolving Loan Fund Webinar Series: Staffing and Day to Day Management Approaches

2:00pm Eastern

For more information and registration, visit <https://www.cdfa.net/cdfa/cdfaweb.nsf/pages/events.html>.

March 14, 2019

MACOG/TAB/Indiana Brownfields Program Technical Training for Local Governments

South Bend

9:00am - 1:00pm Eastern

Register at www.ksutab.org/education/workshops.

March 20-21, 2019

CDFFA Intro. Tax Increment Finance WebCourse
12:00pm - 5:00pm Eastern

For more information and registration, visit <https://www.cdfa.net/cdfa/cdfaweb.nsf/pages/events.html>.



April 5, 2019

DEADLINE: Indiana Office of Community and Rural Affairs (OCRA) Stellar Communities Program Letters of Intent (LOI)

Regional partnership funding available to facilitate economic development. Any incorporated Indiana communities of any size that are not entitled to direct Community Development Block Grant funding through the U.S. Department of Housing and Urban Development are eligible to apply. Instructions and application materials are available at <https://www.in.gov/ocra/stellar.htm>.

May 21, 2019

CDFFA EDA Revolving Loan Fund Webinar Series: Best Practices in Revolving Loan Fund Marketing
2:00pm Eastern

For more information and registration, visit <https://www.cdfa.net/cdfa/cdfaweb.nsf/pages/events.html>.

June 19-20, 2019

CDFFA Intro. Public-Private Partnership (P3) Finance WebCourse

Daily: 12:00pm - 5:00pm Eastern

For more information and registration, visit <https://www.cdfa.net/cdfa/cdfaweb.nsf/pages/events.html>.

Disclaimer

Mention of non-Indiana Finance Authority (IFA) Web site links and documents does not constitute an IFA endorsement of their contents, only an acknowledgement that they exist and may be relevant to our brownfield redevelopment stakeholders.

Indiana Brownfields Program Staff Directory

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The Indiana Brownfields Program offers educational, financial, legal, and technical assistance and works in partnership with the U.S. Environmental Protection Agency and other stakeholders to assist Indiana communities in making productive use of brownfield properties.

Indiana Brownfields Program

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